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# TRANSCRIPT OF RECORD

## Supreme Court of the United States

**OCTOBER TERM, 1929**

## No. 254

NEW JERSEY BELL TELEPHONE COMPANY,
APPELLANT,

*vs.*

THE STATE BOARD OF TAXES AND ASSESSMENT
OF THE STATE OF NEW JERSEY

APPEAL FROM THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY

FILED JULY 20, 1929

(34,385)

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# SUPREME COURT OF THE UNITED STATES

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INDEX


| | Original | Print |
|---|---|---|
| Proceedings in supreme court of New Jersey | 1 | 1 |
| Writ of certiorari | 1 | 1 |
| Return of State board of taxes | 3 | 2 |
| Schedule 1—Company's annual report to board | 5 | 3 |
| 2—Correspondence re gross receipts | 12 | 8 |
| 3—Memorandum showing calculation of gross receipts taxable, etc | 18 | 13 |
| Statement re Schedule 4 | 19 | 14 |
| Schedule 5—Apportionment sheet showing calculation of franchise tax | 20 | 14 |
| Schedule 6—Certificate of apportionment | 21 | 14 |
| Reasons for setting aside assessment of taxes | 24 | 16 |
| Stipulation as to facts | 26 | 17 |


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| | Original | Print |
|---|---|---|
| Statement re Schedule "A" | 32 | 21 |
| "B" | 33 | 21 |
| "C" | 34 | 22 |
| "D" | 35 | 22 |
| Opinion, Black, J | 36 | 22 |
| Rule for judgment | 43 | 27 |
| Notice of appeal | 44 | 28 |
| Proceedings in court of errors and appeals of New Jersey | 47 | 30 |
| Opinion per curiam | 47 | 30 |
| Judgment | 48 | 31 |
| Petition for appeal, assignments of error, and prayer for reversal | 49 | 31 |
| Order allowing appeal | 52 | 34 |
| Citation and service (omitted in printing) | 54 | |
| Bond on appeal ( " " " ) | 56 | |
| Stipulation re transcript of record ( " " " ) | 59 | |
| Clerk's certificate ( " " " ) | 64 | |
| Statement of points to be relied upon and designation of parts of record to be printed | 65 | 35 |

[fols. a-1]

## IN SUPREME COURT OF NEW JERSEY

WRIT OF CERTIORARI

(Allowed June 9, 1928; Returnable June 29, 1928)

NEW JERSEY, ss:

The State of New Jersey to the State Board of Taxes and Assessment, Greeting:

We, being willing, for certain reason (a proper case having been made and due notice of application for this writ having been given to the Attorney-General), to be certified of a certain assessment of taxes for the year 1928 against the New Jersey Bell Telephone Company, made by the State Board of Taxes and Assessment pursuant to an Act of the Legislature of the State of New Jersey entitled (as said title was amended) "An act for the taxation of all the property and franchises of persons, copartnerships, associations or corporations using or occupying public streets, highways, roads or other public places, except municipal and corporations taxable under the act entitled 'An Act for the taxation of railroad and canal property,' approved April tenth, one thousand eight hundred and eighty-four, or any of the supplements or amendments thereto, and except corporations taxable under the act entitled 'An Act for the taxation of the property and franchises of street railroad corporations using or occupying public streets, highways, roads, lanes or other public places in the State,' approved [fol. 2] May twenty-third, one thousand nine hundred and six," approved March 23, 1900, and amended by acts approved March 13, 1917, March 4, 1918 and March 30, 1927, respectively, and supplemented by an act approved March 27, 1928, and known as Chapter 109 of the Laws of 1928:

Do command you, that the said assessment of taxes so made by you, together with all matters touching and concerning the same as fully and entirely as before you they remain, to the Justices of our Supreme Court at Trenton, on the 29th day of June, 1928, you certify and send, together with this writ, that therein may be done what of right and

according to the laws and constitution of this State and of the United States, ought to be done.

Witness William S. Gummere, Esq., Chief Justice, at Trenton, this 9th day of June, 1928.

(Signed) Fred L. Bloodgood, Clerk. Frankland Briggs, Attorney for Prosecutor.

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[fol. 3] IN SUPREME COURT OF NEW JERSEY

NEW JERSEY BELL TELEPHONE COMPANY, Petitioner,

vs.

STATE BOARD OF TAXES AND ASSESSMENT, Defendant

On Certiorari

RETURN OF THE STATE BOARD OF TAXES AND ASSESSMENT—Filed June 26, 1928

The State Board of Taxes and Assessment doth herewith send to the Supreme Court of the State of New Jersey the annual report required by Chapter 195, Laws of 1900, as amended, the certification of the tax, and the proceedings in the matter of the appeal of the New Jersey Bell Telephone Company from the Franchise Tax levied by this Board against this Company for the year 1928 under Chapter 195, Laws of 1900, as amended, as within it is commanded, as by the transcript under the seal of said Board hereto annexed more fully appears.

State Board of Taxes and Assessment, by Chas. E. Cook, Secretary. (Seal.)

The State Board of Taxes and Assessment submits the following schedules concerning the assessment of Franchise Taxes for the year 1928 against the prosecutor, under [fol. 4] the provisions of Chapter 195, Laws of 1900, as amended:

Schedule

1. Copies—Company's Annual Report to Board.
2. Copies—Correspondence concerning the question of Gross Receipts.

Schedule

3. Memorandum—Showing calculation of Taxable Gross Receipts and Franchise Tax.
4. Memorandum—Showing valuation of personal property on public highways, as reported by local assessors for purposes of apportionment of Franchise Tax.
5. Apportionment sheet, showing the calculation of Franchise Tax and the apportionment of tax.
6. Copy—Certificate of apportionment to the Company showing amounts due the taxing districts in which Company operates.

All of which is respectfully submitted.
State Board of Taxes and Assessment, by Chas E. Cook, Secretary.

Trenton, New Jersey, June 26, 1928.

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[fol. 5] SCHEDULE 1 TO RETURN

Received Feb. 1, 1928

Two copies of this report are sent, retain one for your own use, the other file with this Department, on or before February first next.

Telegraph and Telephone Companies

Report of the New Jersey Bell Telephone Company

Chester I. Barnard President.
Stephen C. Ormsbee Treasurer.
Stephen C. Ormsbee Secretary.
Date of Incorporation: August 12, 1904.
Principal Office in New Jersey: City or Town: Newark.
Street and Number: 1060 South Broad St.
Name of Agent in Charge: Frankland Briggs.
The gross receipts of the Association or corporation making this report for business done over its whole line, for the year ending December 31, 1927, are $11,742,764.87.
The length of its whole line is 15,203 miles.

The length of its lines along any street, highway, road, lane, or other public place in the State of New Jersey is 8,403 miles.

The gross receipts of said Association or Corporation in New Jersey, for the year ending December 31, 1927, taxable under provisions of the aforesaid act, are $6,490,226.14.

The following statement shows location and length of lines in, upon or under any public street, road, highway, [fol. 6] lane or other public place in the State of New Jersey.

Tax, @ —, $—.

The lines of this company extend in all directions over and under public and private ways and places in approximately 550 taxing districts in the State of New Jersey. The records of this company will not permit of a division of the mileage of line as between municipalities or taxing districts, and as to mileage on the public streets, roads, highways, lanes, etc. It is therefore impossible to furnish the information required by this portion of the form.

STATE OF NEW JERSEY,
Essex County, ss:

Stephen C. Ormsbee being duly sworn according to law, on his oath says that he is the Treasurer of the New Jersey Bell Telephone Company, and that the foregoing report and statements are correct and true, to the best of his knowledge and belief.

(Signed) Stephen C. Ormsbee.

Address: 1060 South Broad St., Newark, N. J.

Sworn and subscribed before me this first day of February A. D. 1928. Evelyn G. Madden, Notary Public, Essex County. My commission expires October 6, 1932.

[fol. 7] Received Feb. 2, 1928

Two copies of this report are sent, retain one for your own use, the other file with this Department, on or before February first next.

Telegraph and Telephone Companies

Report of the New York Telephone Co.

New York Telephone Company, Legal Department, 140 West Street, New York, N. Y.

N. H. Egleston, Tax Attorney

January 31st, 1928.

Mr. Charles E. Cook, Secretary State Board of Taxes and Assessment, Trenton, New Jersey.

Dear Sir: Inasmuch as New York Telephone Company is not occupying and since September 30th, 1927 has not occupied any of the streets, highways, roads, lanes or public places in the State of New Jersey, it is not during the year 1928 subject to the franchise tax imposed by Chapter 195, Laws of 1900, as amended. It, therefore, will not file with your Board any report of gross receipts for the year ending December 31st, 1927.

Very truly yours, (Signed) N. H. Egleston, Tax Attorney.

NHE—W.

[fol. 8] Received Mar. 12, 1928

Two copies of this report are sent, retain one for your own use, the other file with this Department, on or before February first next.

Telegraph and Telephone Companies

Supplemental Report of the New Jersey Bell Telephone Company

Chester I. Barnard, President.
Stephen C. Ormsbee, Treasurer.
Stephen C. Ormsbee, Secretary.
Date of Incorporation: August 12, 1904.
Principal Office in New Jersey: City or Town: Newark; Street and Number: 1060 South Broad St.
Name of Agent in Charge: Frankland Briggs.

The gross receipts of the Association or Corporation making this report for business done over its whole line, for the year ending December 31, 1927, are $3,535,020.81.

The length of its whole line is 15,203 miles.

The length of its lines along any street, highway, road, lane, or other public place in the State of New Jersey is 8,403 miles.

The gross receipts if any of said Association or Corporation in New Jersey, for the year ending December 31, 1927, taxable under provisions of the aforesaid act, are $1,953,-806.00.

The following statement shows location and length of lines in, upon or under any public street, road, highway, lane or other public place in the State of New Jersey.

Tax, @ —, $—.

[fol. 9] This report supplements the report made by this company and filed with the State Board of Taxes and Assessment of New Jersey February 1, 1928, and is made at the demand of said State Board.

This report is made and filed under protest for the reasons that the gross receipts herewith submitted are those derived solely from its interstate business and are not the proper legal basis of a tax to be levied and assessed under the provisions of Chapter 195, P. L. 1900, as amended; that the State of New Jersey is without legal authority to assess or levy a tax which is based in whole or in part upon such receipts.

State of New Jersey,
Essex County, ss:

Stephen C. Ormsbee being duly sworn according to law, on his oath says that he is the Treasurer of the New Jersey Bell Telephone Company, and that the foregoing report and statements are correct and true, to the best of his knowledge and belief.

(Signed) Stephen C. Ormsbee.

Address: 1060 South Broad St., Newark, N. J.

Sworn and subscribed before me this third day of March, A. D. 1928. Evelyn G. Madden, Notary Public, Essex County. My commission expires October 6, 1932.

[fol. 10] Received Apr. 10, 1928

Two copies of this report are sent, retain one for your own use, the other file with this Department, on or before February first next.

Telegraph and Telephone Companies

Report of the New Jersey Bell Telephone Company

Chester I. Barnard, President.
Stephen C. Ormsbee, Treasurer.
Stephen C. Ormsbee, Secretary.
Date of Incorporation: August 12, 1904.
Principal Office in New Jersey: City or Town: Newark; Street and Number: 1060 South Broad St.
Name of Agent in Charge: Frankland Briggs.

Report of the New Jersey Bell Telephone Company of the gross receipts of the New York Telephone Company from January 1st, 1927 to October 1st, 1927, the date of the acquisition of the rights, property and franchises of the New York Telephone Company by the said New Jersey Bell Telephone Company, made in accordance with the provisions of Chapter 109 of the Laws of 1928.

The gross receipts of the New York Telephone Company for business done over its whole line for the period from January 1, 1927 to October 1, 1927 are:

| | |
|---|---|
| Receipts derived from intra-state business | $19,103,675.59 |
| Receipts derived from inter-state business | 5,898,870.78 |
| Total gross receipts | $25,002,546.37 |

The length of its whole line is 10,829 miles.

[fol. 11] The length of its lines along any street, highway, road, lane, or other public place in the State of New Jersey is 5,516 miles.

The gross receipts of said New York Telephone Company for the period from January 1, 1927 to October 1, 1927 taxable under the provisions of the act aforesaid are:

| | |
|---|---|
| Receipts derived from intra-state business | $9,731,412.35 |
| Receipts derived from inter-state business | 3,004,884.77 |
| Total | $12,736,297.12 |

Tax at —, $—.

This report is made and filed under protest, for the reason that a portion of the gross receipts herein reported are derived solely from interstate business and are not the proper legal or constitutional basis of a tax to be levied and assessed under the provisions of Chapter 195, P. L. 1900, as amended, and Chapter 109, P. L. 1928.

State of New Jersey,
Essex County, ss:

Stephen C. Ormsbee being duly sworn according to law, on his oath says that he is the Treasurer of the New Jersey Bell Telephone Company, and that the foregoing report and statements are correct and true, to the best of his knowledge and belief.

(Signed) Stephen C. Ormsbee.

Address: 1060 South Broad St., Newark, N. J.

Sworn and subscribed before me this ninth day of April, A. D. 1928. Evelyn G. Madden, Notary Public, Essex County. My commission expires October 6, 1932.

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[fol. 12] Schedule 2 to Return

New Jersey Bell Telephone Company, 1060 Broad Street

Frankland Briggs, Vice President and General Counsel.
Leonard A. Sweney, Tax Attorney

Newark, N. J., February 6, 1928.

State Board of Taxes and Assessment, Charles E. Cook, Secretary, State House, Trenton, N. J.

Gentlemen: Complying with your Mr. Cogill's verbal request for information in connection with the gross receipts report of the New Jersey Bell Telephone Company made in compliance with Chapter 195, P. L. 1900, as amended, and filed with your board on the first instant, I would advise that in arriving at the total gross receipts

($11,742,764.87) shown on the report, the receipts of the New York Telephone Company for its nine months' operation of the lines in the northern and central areas during the year 1927 have been omitted. Our reasons for this omission are that the act requires the corporation reporting to report its gross receipts. The tax, by the decisions of our courts, is not a property tax, but a franchise or excise tax, and therefore properly a corporate tax. The New Jersey Bell Telephone Company is not the corporate successor of the New York Telephone Company, but, by purchase, succeeds only to the property interests of that company in and as to the physical properties acquired.

[fol. 13] The receipts of the New York Company during the first nine months of 1927 are not and cannot be considered as the receipts of the New Jersey Company. In fact, no part of the income of the New York Company came into the treasury of the New Jersey Company. Further, under the decision in the case of the New York and New Jersey Water Company v. Assessors, 88 N. J. L. 595, affirmed in 90 N. J. L. 537, the tax is a current tax and in the present instance is for the year 1928, and the basis for the tax is the situation as of December 31, 1927. We have reported the entire gross receipts of the New Jersey Company as of that date, with the exception of the receipts derived from interstate business. We feel that as to the nine months of operation by the New York Company we have complied with the terms and the meaning of the act.

We have not included in the total amount of gross receipts that portion of those receipts derived from interstate business. Our theory upon this phase of the matter is that a tax based in whole or in part on such receipts is a burden upon interstate commerce and therefore in violation of the commerce clause of the Federal Constitution.

These matters were discussed with Mr. Cogill, who, I am sure, will explain to you fully our position.

In connection with your letter of February 2, I will furnish the information therein requested at the earliest possible date.

Respectfully (Signed) L. A. Sweney, Tax Attorney.

LAS HSM.

[fol. 14] State of New Jersey State Board of Taxes and Assessment

Trenton, N. J., Feb. 29, 1928.

In re "New Jersey Bell Telephone Co."

Mr. Leonard A. Sweney, Tax Attorney, 1060 Broad Street, Newark, N. J.

DEAR MR. SWENEY: I am directed to advise you that the Report filed by the above named Corporation with this Department on February 1, 1928, is not satisfactory, inasmuch as the gross receipts reported are those which represent the amount of intrastate business only.

We must ask that you file a corrected Report at once for the period ending December 31, 1927, which will show the receipts, both interstate and intrastate, of the above named Corporation, which would include those of the Delaware & Atlantic Telegraph & Telephone Company, up to the time of its change of name to the New Jersey Bell Telephone Company, for which purpose additional blank forms are enclosed herewith.

In making this request, we wish to be understood that we in no way waive our right to a Report which will show the amount of gross receipts of the New York Telephone Company up to the time it was taken over by the New Jersey Bell Telephone Company.

Thanking you in advance for prompt attention, we remain

(Signed) Very truly yours, Chas. E. Cook, Secretary.
JHC/L.

[fol. 15] New Jersey Bell Telephone Company, 1060 Broad Street

Frankland Briggs, Vice President and General Counsel.
Leonard A. Sweney, Tax Attorney

Newark, N. J., March 5, 1928.

State Board of Taxes and Assessment, Charles E. Cook, Secretary, State House, Trenton, N. J.

GENTLEMEN: Receipt is hereby acknowledged of your letter of the 29th ult., in conection with the gross receipts re-

port of this company filed with your board on February 1st, 1928, under the provisions of Chapter 195, P. L. 1900, as amended.

Complying with the request therein contained, there is enclosed herewith a supplemental report, showing the interstate receipts of the New Jersey Bell Telephone Company for the year ending December 31st, 1927, which receipts include those of the Delaware and Atlantic Telegraph and Telephone Company for the first nine months, and those of this company for the last three months of 1927.

This report, it is to be understood, is filed under protest, it being the contention of this company that the State of New Jersey is without legal authority to levy a tax based in whole or in part upon receipts derived from interstate business, and that interstate receipts are not the proper basis of a tax to be assessed under the provisions of Chapter 195, P. L. 1900, as amended.

It is understood that this Company, by the filing of this or any other report, in no way waives its right to attack [fol. 16] any tax levied or to be levied or assessed by the State against it which may include as a basis of the tax that portion of its gross receipts derived from interstate business.

Very truly yours, (Signed) Leonard A. Sweney, Tax Attorney.

LAS. HSM.

State of New Jersey, State Board of Taxes and Assessment

Trenton, N. J., March 31, 1928.

New Jersey Bell Telephone Company, Leonard A. Sweney, Esq., 1060 Broad St., Newark, N. J.

Dear Sir: The Board directs me to inform you that under Chapter 109, Laws of 1928, copy of which is enclosed, you are required to report to this Board the gross receipts of the New York Telephone Company, from January 1, 1927 to the date of the acquisition of this company by the New Jersey Bell Telephone Company.

A blank form for this purpose is enclosed.

Your prompt attention to this matter is requested, in order that the work of computing and apportioning the

gross receipts and franchise taxes for this year, by this Department, may not be further delayed.

Very truly yours, (Signed) Chas. E. Cook, Secretary.

[fol. 17] New Jersey Bell Telephone Company, 1060 Broad Street

Frankland Briggs, Vice President and General Counsel.
Leonard A. Sweney, Tax Attorney

Newark, N. J., April 9, 1928.

State Board of Taxes and Assessment, Charles E. Cook, Secretary, State House, Trenton, N. J.

Dear Sir: I enclose herewith the report of the New Jersey Bell Telephone Company of the gross receipts of the New York Telephone Company for the period from January 1, 1927 to October 1, 1927, the date of the acquisition of the rights, property and franchises of the New York Telephone Company by this reporting company, which report is made in accordance with the provisions of Chapter 109, Laws of 1928, and requested by your letter of the 31st ult.

It is to be understood that this report is filed under protest, for the reason that a portion of the gross receipts herein reported are derived solely from interstate business and are not the proper legal or constitutional basis of a tax to be levied and assessed under the provisions of Chapter 195, P. L. 1900, as amended, and Chapter 109, P. L. 1928.

As in the case of the supplemental report dated March 3, 1928 and enclosed with my letter of March 5, it is to be understood that this company, by the filing of this report, in no way waives its right to attack any tax levied or to be levied or assessed by the State against it, which may in-
[fol. 18] clude as a basis of the tax gross receipts derived from interstate business.

Very truly yours, (Signed) Leonard A. Sweney, Tax Attorney.

LAS. HSM.

Enc. -1.

SCHEDULE 3 TO RETURN

Memorandum Showing Calculations of Gross Receipts Taxable and Amount of Tax for Year 1928

This calculation is made in accordance with provisions of Chapter 195, Laws of 1900, as amended, using gross receipts and lengths of line as reported by the New Jersey Bell Telephone Company in their annual report to this Board.

| | | | |
|---|---|---|---|
| Gross Receipts of New York Telephone Company from Jan. 1, 1927, to Oct. 1, 1927: | | | |
| From Intra-state Business.... | $19,103,675.59 | | |
| From Inter-state Business.... | 5,898,870.78 | | |
| | | $25,002,546.37 | |
| Length of whole line, New York Telephone Company... | 10,829 miles | | |
| Length of line on public highway, New York Telephone Company ..... | 5,516 miles | | |
| Taxable Gross Receipts: | | | |
| $\frac{5,516}{10,829} \times \$25,002,546.37 =$ ..... | | | $12,735,621.53 |
| Gross Receipts of New Jersey Bell Telephone Company from Jan. 1, 1927, to Dec. 31, 1927: | | | |
| From Intra-state Business.... | $11,742,764.87 | | |
| From Inter-state Business.... | 3,535,020.81 | | |
| | | $15,277,785.68 | |
| Total Gross Receipts..... | | | $40,280,332.95 |
| Length of whole line, New Jersey Bell Telephone Company ..... | 15,203 miles | | |
| Length of line on public highway, New Jersey Bell Telephone Company..... | 8,403 miles | | |
| Taxable Gross Receipts: | | | |
| $\frac{8,403}{15,203} \times \$15,277,785.68 =$ ..... | | | 8,444,335.52 |
| Total Taxable Gross Receipts..... | | | $21,179,957.05 |

Tax, at 5%, = $1,058,997.85.

[fol. 19] STATEMENT RE SCHEDULE 4 TO RETURN

This schedule is a statement, by counties, of the various municipalities of the State of New Jersey in which appellant, New Jersey Bell Telephone Company, owns tangible personal property located on the public highways, together with the valuations of such property of said appellant as of October 1, 1927, as reported to the State Board of Taxes and Assessment by local assessors, through the county boards of taxation, for the purposes of apportionment of franchise tax for the year 1928. The total valuation of said property as shown by said statement is $41,189,804.00.

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[fol. 20] SCHEDULE 5 TO RETURN

Apportionment sheet showing apportionment of Franchise Tax of the New Jersey Bell Telephone Company for the year 1928 to various taxing districts in which this Company operates and therefore entitled to receive a share in proportion to the value of the property of the Company located on the highway of the district.

Taxable Gross Receipts: $21,179,957.05.

Tax at 5% = $1,058,997.85.

Example:

Tax (1,058,997.85) ÷ Valuation ($41,189,804) = Rate (.0257101939).

Valuation (22,173) × Rate (.0257101939) = Apportionment of tax for district ($570.07) (Absecon City—Atlantic County).

(Apportionment for balance of districts may be made by applying rate to valuations of local assessors as set out in Schedule 5.)

[fol. 21] SCHEDULE 6 TO RETURN

Franchise Tax, Corporations

Certificate of Apportionment

State Board of Taxes and Assessment

Trenton, N. J., May 15, 1928.

To the New Jersey Bell Telephone Company, Stephen C. Ormsbee, Treas., 1060 Broad St., Newark, N. J.:

I hereby certify that the State Board of Taxes and Assessment, in compliance with the provisions of Section 6

of an act of the Legislature of New Jersey (Chapter 195, P. L. 1900, as amended), has certified and reported to the Collector of Taxes of the several taxing districts through which the lines of your Company extend, the following apportionment of franchise tax due by your Company to such taxing districts respectively, said franchise tax being levied at the rate provided by law upon the gross receipts of your Company for business done in the State of New Jersey during the year ending December 31st last, and being apportioned in proportion to the value of your property located in, upon or under any public street, road, highway, lane or other public place in such taxing districts, and being payable in the same manner that other taxes are payable.

By order of the Board.

Chas. E. Cook, Secretary.

[fol. 22] Taxable Gross Receipts for the year ending December 31, 1927: $21,179,957.05.

Franchise Tax, @ 5%, $1,058,997.85.

Apportionment

The remainder of this schedule is an apportionment of the franchise tax above shown, listing the various municipalities of the State of New Jersey, by counties, to which the tax was apportioned, together with the amount of tax due each municipality.

---

[fol. 23] State of New Jersey, State Board of Taxes and Assessment

I, Chas. E. Cook, Secretary of the State Board of Taxes and Assessment, do hereby certify, that the foregoing are true copies of the reports, valuations of property as submitted by local assessors, certification to Company of tax due districts, and proceedings in the matter of the appeal of the New Jersey Bell Telephone Company, from the assessment of Franchise Tax levied under Chapter 195, Laws of 1900, as amended, for the year 1928, as the same are taken from and compared with the originals filed in the office of the State Board of Taxes and Assessment, on the first day of February and other dates A. D. 1928, and now remaining on file and of record therein.

In testimony whereof I have hereunto set my hand and affixed the official seal of the Board, at Trenton this twenty-sixth day of June, A. D. 1928.

Chas. E. Cook, Secretary. (Seal.)

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[fol. 24] IN SUPREME COURT OF NEW JERSEY

[Title omitted]

REASONS FOR SETTING ASIDE ASSESSMENT OF TAXES—Filed July 2, 1928

The Prosecutor presents the following reasons for setting aside the assessment of taxes for the year 1928 against the Prosecutor made by the State Board of Taxes and Assessment and brought before this Honorable Court by the writ of certiorari in the above entitled cause:

1. Because the Act of the Legislature of the State of New Jersey, with the amendments thereof and supplements thereto, upon which the said assessment is based, and which is referred to in the said writ, is, in so far as it imposes or imports to impose a tax upon that part of the gross monetary receipts of the Prosecutor, which is derived from telephone messages transmitted from the State of New Jersey to other states of the United States and foreign countries, and/or messages received in the State of New Jersey from other states of the United States and foreign countries, an invalid regulation of and/or burden upon interstate commerce in violation of Article I, Section 8, Para-[fol. 25] graph 3, of the Constitution of the United States;

2. Because the said assessment imposes a tax based upon the gross monetary receipts of the Prosecutor derived from the transmission of telephone messages from the State of New Jersey to other states of the United States and foreign countries and/or messages received in the State of New Jersey from other states of the United States and foreign countries, as well as upon receipts derived from telephone messages transmitted and received wholly within the State of New Jersey; and, in so far as the said assessment is based upon monetary receipts derived from telephone messages transmitted from the State of New Jersey to other

states of the United States and foreign countries, and/or messages received in the State of New Jersey from other states of the United States and foreign countries, it constitutes an invalid regulation of and/or burden upon interstate commerce in violation of Article I, Section 8, Paragraph 3, of the Constitution of the United States.

(Signed) Frankland Briggs, Attorney for Prosecutor. Thomas G. Haight, of Counsel with Prosecutor.

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[fol. 26] IN SUPREME COURT OF NEW JERSEY

[Title omitted]

STIPULATION AS TO FACTS—Filed Aug. 4, 1928

It is hereby stipulated and agreed by and between the parties to this cause that the following shall be and constitute the state of facts upon which the above entitled action shall be submitted to the Court for adjudication:

1. The Prosecutor, New Jersey Bell Telephone Company, is a corporation organized and existing under the laws of the State of New Jersey, having its principal place of business in the City of Newark, Essex County, New Jersey.

2. Said New Jersey Bell Telephone Company is engaged, within said State, in the business of furnishing telephone service to and from points lying wholly in said State; and service to and from points lying in said State and points lying in other states of the United States and to and from points lying in said State and points lying in foreign countries.

3. In the conduct of its business aforesaid, said New Jersey Bell Telephone Company uses and occupies various [fol. 27] public streets, highways, roads and other public places in the State of New Jersey. Said company owns a vast amount of real and personal property which is located in the various taxing districts of New Jersey, in part on private property and in part upon the public streets, highways, roads, lanes or other public places of said State.

4. The real and tangible personal property of said New Jersey Bell Telephone Company has been assessed and taxed a property tax for the year 1928 by the local taxing officials of the various taxing districts of the State wherein the said property is located, and all taxes so assessed which are due and payable, except where appeals are pending, have been paid. Said New Jersey Bell Telephone Company is not subject to any franchise tax or tax upon its intangible property for the year 1928 other than that made pursuant to the act or acts under which the assessment here in question was made.

5. On or about the first day of February, 1928, the New Jersey Bell Telephone Company filed with the State Board of Taxes and Assessment a report as required by an Act of the Legislature of the State of New Jersey approved March 23, 1900 and entitled (as said title was amended) "An Act for the taxation of all the property and franchises of persons, copartnerships, associations or corporations using or occupying public streets, highways, roads or other public places, except municipal and corporations taxable under the act entitled 'An Act for the taxation of railroad and canal property,' approved April tenth, one thousand [fol. 28] eight hundred and eighty-four, or any of the supplements or amendments thereto, and except corporations taxable under the act entitled 'An Act for the taxation of the property and franchises of street railroad corporations using or occupying public streets, highways, roads, lanes or other public places in this State,' approved May twenty-third, one thousand nine hundred and six," as the same was amended by acts approved March 13, 1917, March 4, 1918 and March 30, 1927. A true copy of said report is annexed hereto as "Schedule A." The gross receipts set forth in the said report did not include any receipts resulting from telephone messages transmitted from the State of New Jersey to other states of the United States and foreign countries or messages received in the State of New Jersey from other states of the United States and foreign countries. The State Board of Taxes and Assessment was acquainted with this fact by a letter dated February 6th, 1928 and written to said Board by Leonard A. Sweney, the Tax Attorney of said Company.

6. Subsequently, by letter from the said Board dated February 29, 1928, the New Jersey Bell Telephone Company was directed to supplement the aforesaid report by reporting also the gross receipts of its business over, in, on and from its whole line for the year ending December 31, 1927, resulting from telephone messages transmitted from the State of New Jersey to other states of the United States and foreign countries, and from telephone messages received in the State of New Jersey from other states of the United States and foreign countries.

[fol. 29] On or about March 3, 1928, the said New Jersey Bell Telephone Company, in compliance with said direction of the State Board of Taxes and Assessment of New Jersey, filed with the said Board a report, of which the annexed, marked "Schedule B," is a true copy.

Thereafter, on or about April 9, 1928, pursuant to the provisions of an act of the Legislature of New Jersey entitled "An Act to supplement an act entitled 'An Act for the taxation of all the property and franchises of persons, copartnerships, associations or corporations using or occupying public streets, highways, roads or other public places, except municipal and corporations taxable under the act entitled 'An Act for the taxation of railroad and canal property,' approved April tenth, one thousand eight hundred and eighty-four, or any of the supplements or amendments thereto, and except corporations taxable under the act entitled, 'An Act for the taxation of the property and franchises of street railroad corporations using or occupying public streets, highways, roads, lanes or other public places in this State,' approved May twenty-third, one thousand nine hundred and six, which first named act was approved March twenty-third, one thousand nine hundred, and amended by acts approved March thirteenth, nineteen hundred and seventeen, March fourth, nineteen hundred and eighteen, and March thirtieth, nineteen hundred and twenty-seven," approved March 27th, 1928, the said New Jersey Bell Telephone Company filed with the said State Board of Taxes and Assessment a report showing the gross receipts of the New York Telephone Company of business over, [fol. 30] in, on and from its whole line for the period of time from January 1, 1927 to October 1, 1927. Said report included gross receipts derived from the business of trans-

mitting and receiving telephone messages wholly within the State of New Jersey, the business of transmitting telephone messages from the State of New Jersey to other states of the United States and foreign countries, and the business of receiving messages in the State of New Jersey from other states of the United States and foreign countries. A true copy of said report is annexed hereto as "Schedule C."

7. On or about May 15th, 1928, the said State Board of Taxes and Assessment assessed against the said New Jersey Bell Telephone Company a tax upon such proportions of the total gross receipts of the New Jersey Bell Telephone Company for the year 1927 resulting from telephone messages transmitted and received within the State of New Jersey, as well as from messages transmitted from the State of New Jersey to other states of the United States and foreign countries and messages received in the State of New Jersey from other states of the United States and foreign countries, and the total gross receipts of the said New York Telephone Company received in the State of New Jersey from January 1st, 1927 to October 1st, 1927, resulting both from messages transmitted and received within the State of New Jersey and from messages transmitted from the State of New Jersey to other states of the United States and foreign countries and messages received in the State of New Jersey from other states of the United States and foreign countries, as the lengths of the lines [fol. 31] of the said New Jersey Bell Telephone Company and New York Telephone Company, respectively, in this state, along, in, on or over any street, highway, road, lane or other public place bear to the respective lengths of the whole lines of said companies, all as required by the act approved March 23, 1900, as amended, the title of which act, as amended, is set forth in Paragraph 5 hereof, and the act approved March 27, 1928, the title of which act is set forth in Paragraph 6 hereof.

8. Said tax, so assessed, amounts to the sum of $1,058,997.85. A true statement of the total gross receipts of the New York Telephone Company from January 1, 1927 to October 1, 1927, and the total gross receipts of the New Jersey Bell Telephone Company from January 1, 1927 to December 31, 1927, together with the taxable gross receipts of said companies, the tax computed thereon and the

method used in calculating the same all as fixed by said State Board of Taxes and Assessment is annexed hereto and marked "Schedule D."

9. Said Board of Taxes and Assessment apportioned the said tax to the various taxing districts of the State in proportion to the value of the property of the said New Jersey Bell Telephone Company located in, upon or under any public street, road, highway, lane or other public place therein as directed by the said act approved March 23rd, 1900, as amended. The proportion of the said tax which became due on June 1st, 1928, has been paid by the said New Jersey Bell Telephone Company to the various taxing districts in accordance with the apportionment made as [fol. 32] aforesaid by the said State Board of Taxes and Assessment.

Frankland Briggs, Attorney for Prosecutor. Edward L. Katzenbach, Attorney-General, Attorney for Defendant.

Dated July 31, 1928.

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STATEMENT RE "SCHEDULE A" TO STIPULATION

Schedule "A" is the report of the New Jersey Bell Telephone Company of its gross receipts ending December 31, 1927, the length of its whole line and length of its lines along any street, highway, road, lane or other public place in the State of New Jersey, together with the taxable gross receipts of said company, which report was sworn to by Stephen C. Ormsbee on February 1, 1928, and is the same as is shown in Schedule 1 of the Return of the State Board of Taxes and Assessment.

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[fol. 33] STATEMENT RE "SCHEDULE B" TO STIPULATION

Schedule "B" is the Supplemental Report of the New Jersey Bell Telephone Company of its gross receipts from interstate business for the year ending December 31, 1927, the length of its whole line and the length of its line along any street, highway, road, lane or other public place in the State of New Jersey, together with the taxable gross re-

ceipts of said company, which report was sworn to by Stephen C. Ormsbee on March 3, 1928, and is the same as shown in Schedule 1 of the Return of the State Board of Taxes and Assessment.

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[fol. 34] STATEMENT RE "SCHEDULE C" TO STIPULATION

Schedule "C" is the report of the New Jersey Bell Telephone Company of the gross receipts, both intrastate and interstate, of the New York Telephone Company from January 1, 1927 to October 1, 1927, made in accordance with the provisions of Chapter 109 of the Laws of 1928 of the State of New Jersey; the length of the whole line of said New York Telephone Company, and the length of the lines of said New York Telephone Company along any street, highway, road, lane or other public place in the State of New Jersey, together with the taxable gross receipts of said New York Telephone Company, which report was sworn to by Stephen C. Ormsbee on April 9, 1928, and is the same as shown in Schedule 1 of the Return of the State Board of Taxes and Assessment.

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[fol. 35] STATEMENT RE "SCHEDULE D" TO STIPULATION

Schedule "D" is the memorandum showing calculation of gross receipts taxable and amount of tax for year 1928 and is the same as the memorandum shown in Schedule 3 of the Return of the State Board of Taxes and Assessment.

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[fol. 36] IN SUPREME COURT OF NEW JERSEY

[Title omitted]

Submitted October Term, 1928. Decided December 6th, 1928

OPINION—Filed December 6th, 1928

1

The method provided by the Statute; P. L. 1900, p. 502, as amended by P. L. 1927, p. 567, for ascertaining the value of the franchise tax of those using the public streets, highways or roads having part of the lines in New Jersey and

part in another State based upon gross receipts, the franchise tax for business done in New Jersey shall be upon such proportion of such gross receipts, as the length of the lines or mains in New Jersey bears to the length of the whole line or main. This method of calculating the value of the franchise does not offend against Art. One (1), Section Eight (8), paragraph three (3), of the Constitution of the United States; the interstate commerce clause. It is not a regulation of interstate commerce.

[fol. 37] 2

It is not a tax on gross receipts. The gross receipts being taken merely as a token or measure of the value of the franchise in New Jersey.

3

The case of Phillipsburg, &c. R. R. Co. v. State Board of Assessors, 82 N. J. L. 49; decided under P. L. 1906, p. 644, Sec. 4, 5, approved and followed.

Before Justices Minturn, Black, and Campbell

For the Prosecutor: Messrs. Wall, Haight, Carey & Hartpence; Mr. Frankland Briggs.

For the Defendant: John Solan, Esq., and Edward L. Katzenbach, Attorney-General of New Jersey.

The opinion of the Court was delivered by Black, J.:

The certiorari in this case was allowed to review the taxes assessed by the State Board of Taxes and Assessment against the prosecutor, the New Jersey Bell Telephone Company, for the year 1928, pursuant to the provisions of the Voorhees Franchise Tax Act, P. L. 1900, p. 502, as the same has been amended by the Acts, P. L. 1917, p. 42; P. L. 1918, p. 907; P. L. 1927, p. 567, and P. L. 1928, p. 233. The latter Act has no application to this controversy, that Act simply imposes upon the prosecutor, as the successor to part of the business of the New York Company the tax, to which the latter would have been subject under the Act, P. L. 1900, p. 502, had it continued to do business in New Jersey during the year 1928.

The sole reason assigned for setting aside the tax was the method, by which the amount of the tax was computed.

The allegation is, that in so far as, it is based in part [fol. 38] upon gross receipts derived from interstate commerce, it is a regulation of and burden upon interstate commerce, in violation of Article One (1), Section Eight (8), Paragraph Three (3), of the Constitution of the United States.

The method, *by* which the State Board of Taxes and Assessment adopted in calculating the tax under review is as follows:

**Memorandum Showing Calculations of Gross Receipts Taxable and Amount of Tax for Year 1928**

**This calculation is made in accordance with provisions of Chapter 195, Laws of 1900, as amended, using gross receipts and lengths of line as reported by the New Jersey Bell Telephone Company in their annual report to this Board.**

| | | | |
|---|---|---|---|
| Gross Receipts of New York Telephone Company from Jan. 1, 1927, to Oct. 1, 1927: | | | |
| From Intra-state Business.... | $19,103,675.59 | | |
| From Inter-state Business.... | 5,898,870.78 | | |
| | | $25,002,546.37 | |
| Length of whole line, New York Telephone Company... | 10,829 miles | | |
| Length of line on public highway, New York Telephone Company ..... | 5,516 miles | | |
| Taxable Gross Receipts: | | | |
| $\frac{5,516}{10,829} \times \$25,002,546.37 =$ ..... | | | $12,735,621.53 |
| Gross Receipts of New Jersey Bell Telephone Company from Jan. 1, 1927, to Dec. 31, 1927: | | | |
| From Intra-state Business.... | $11,742,764.87 | | |
| From Inter-state Business.... | 3,535,020.81 | | |
| | | $15,277,785.68 | |
| Total Gross Receipts..... | | | $40,280,332.95 |
| Length of whole line, New Jersey Bell Telephone Company ..... | 15,203 miles | | |
| Length of line on public highway, New Jersey Bell Telephone Company..... | 8,403 miles | | |
| Taxable Gross Receipts: | | | |
| $\frac{8,403}{15,203} \times \$15,277,785.68 =$ ..... | | | 8,444,335.52 |
| Total Taxable Gross Receipts..... | | | $21,179,957.05 |

Tax, at 5%, = $1,058,997.85.

[fol. 39] The pertinent parts of the statute under which the tax was calculated and assessed are as follows:

Sec. 1. "All the property, real and personal, and fran-"chises of all persons, co-partnerships, associations or cor-"porations, other than municipal or corporations taxed "under the Act," &c. that "have or may hereafter have "the right to use or occupy and occupying the streets, "highways, roads, lanes or public places in this State, "shall hereafter be valued, assessed and taxed as herein-"after provided." P. L. 1900, p. 502, as amended by P. L. 1917, p. 42.

Sec. 8. "The franchise taxes imposed by this Act shall "be in lieu of all other franchise taxes now assessed against "the persons, co-partnerships, associations or corporations, "subject to the provisions of this Act and their property." P. L. 1900, p. 502, as amended by P. L. 1902, 477.

Sec. 4. "All such persons, &c., having part of his, her "or its lines or mains in this State and part thereof in "another State or States, or having part of his, her or its "lines or mains on private property and part thereof on "public streets, highways, roads, lanes or other public "places, shall make a report showing the gross receipts "of his, her or its business over, in, on and from the whole "line or mains, together with a statement of the length of "the whole line or mains and the length of the line or "mains in this State along any street, highway, road, lane "or other public place; and the franchise tax of such per-"son, &c., for business so done in this State, shall be upon "such proportion of such gross receipts as the length of [fol. 40] "the lines or mains in this State, along, in, on or "over any street, highway, road, lane or other public place "bears to the length of the whole line or mains"; P. L. 1927, p. 567, Sec. 4.

This precise question was before this Court in the case of Phillipsburg, &c., R. R. Co. v. State Board of Assessors, 82 N. J. L. 49. That case, however, was decided under the Act of P. L. 1906, p. 844; but that Statute was a copy of the Act P. L. 1900, p. 502, Sec. 4, involved in this controversy. The same point was considered in the case of

Phillipsburg Transit Co. v. State Board of Taxes and Assessment, 99 N. J. L. 319, affirmed 101 N. J. L. 225; under P. L. 1906, p. 644, Sec. 4, as amended by P. L. 1918, p. 903.

The facts of the case under review and the law pertinent thereto are similar to the facts and the law involved in those cases. The Act, P. L. 1906, p. 644, Sec. 4, under which the Phillipsburg case was decided and the Act under discussion, P. L. 1900, p. 502, so far as this controversy is concerned, the pertinent parts of the Acts are identical, as stated above, the Act, P. L. 1906, p. 644, was copied from the Act of P. L. 1900, p. 502.

So, we feel bound to follow the case of Phillipsburg, &c., R. R. Co. v. State Board of Assessors, 82 N. J. L. 49. We think, however, that case was rightfully decided and quite independent of that case, we think the method adopted by the State Board of Taxes and Assessment in the instant case was not illegal and not in violation of the commerce clause of the United States Constitution, but in harmony with the decisions of the United States Supreme Court, the ultimate authority on the point here involved.

[fol. 41] It would be a hopeless task to even attempt to harmonize the decisions of that Court on this point, much more, it would be a useless task, as that Court is the sole and ultimate authority on the subject. The application of these decisions to specific cases, as they arise, must be made by that Court, and as has been said, by this Court in reference to those decisions, they would gain nothing by our concurrence and suffer nothing by our dissent. Erie R. R. Co. v. Public Utility Commissioners, 89 N. J. L. 90. It may not be amiss, however, to point out the cases which the State relies upon for sustaining the method adopted for calculating the amount of the tax in the present case.

Adams Express Co. v. Ohio State Auditor, 165 U. S. 194; Cudahy Packing Co. v. State of Minnesota, 246 U. S. 450. In that case it was said, the nature and effect of taxes more or less like this has been repeatedly considered in this Court. In some instances its solution has been attended with considerable difficulty, for while the controlling general principles have long been well settled, it has not been easy to apply them to all the varying situations presented. Pullman Co. v. Richardson, 261 U. S. 330; State of Maine v. Grand Trunk Ry. Co., 142 U. S. 217.

On the other hand, the prosecutor relies upon the cases of State of Maine v. Grand Trunk Ry. Co., 142 U. S. 217; Philadelphia, &c., Steamship Co. v. Pennsylvania, 122 U. S. 326; Galveston, &c., Ry. Co. v. Texas, 210 U. S. 217; Meyer, &c., Oklahoma v. Wells Fargo, &c., Co., 223 U. S. 298.

[fol. 42] The prosecutor insists, that these cases hold, that license or franchise taxes based on gross receipts partly derived from interstate commerce are illegal. Such taxes are an unlawful regulation of or burden upon interstate commerce, in so far as they are based on gross receipts derived from interstate commerce.

The State distinguishes the cases above cited from the present case and urges, in the case at bar, the tax in question is the only one imposed by statute upon the property right, i. e., the franchise right of the prosecutor, to use the public streets, and that, in valuing that property right account may be taken under the doctrine in the case of the United States Express Co. v. State of Minnesota, 223 U. S. 335, of the total receipts of which the employment of such special franchise gives rise, including receipts from interstate commerce, or as expressed by Mr. Justice Van Deventer, in the case of Cudahy Packing Co. v. State of Minnesota, 246 U. S. 450; it was not in reality a tax on the gross earnings, but was a tax on the property, the earnings being taken merely as an index or measure of the value of the property for taxing purposes. We think that is the situation in this case. The method adopted for calculating the tax, viz., the gross earnings being taken merely as a measure of the value of the franchise of the prosecutor.

The tax brought under review is affirmed and the writ of certiorari is dismissed.

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[fol. 43] In Supreme Court of New Jersey

New Jersey Bell Telephone Company, Prosecutor,

vs.

State Board of Taxes and Assessment, Defendant

On Certiorari

Rule for Judgment—December 11, 1928

The Court having inspected the assessment of taxes removed by the writ in this cause, the reasons filed herein and

heard the argument of counsel thereon and having duly considered the same, it is ordered that said assessment of taxes be affirmed and the writ of certiorari dismissed.

Entered December 11, 1928.

On motion of

Edward L. Katzenbach, Attorney General of New Jersey, Attorney for Defendant.

A true copy. Fred L. Bloodgood, Clerk.

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[fol. 44] In Supreme Court of New Jersey

[Title omitted]

Notice of Appeal—Filed January 15, 1929

To State Board of Taxes and Assessment and Hon. Edward L. Katzenbach, Attorney General of New Jersey:

Take notice, that the Prosecutor in the above-entitled cause appeals to the New Jersey Court of Errors and Appeals in the last resort in all causes, from the whole of the judgment entered in this cause on the following grounds, to wit:

1. Because the Supreme Court sustained an assessment of taxes for the year 1928 against the Prosecutor made by the State Board of Taxes and Assessment, and dismissed the writ of certiorari which brought the said assessment before the said Court for review.

2. Because the Supreme Court rendered judgment for the defendant rather than the Prosecutor.

3. Because in rendering the said judgment the Supreme Court decided that the Act of the Legislature of the State of New Jersey, with the amendments thereof and supple-
[fol. 45] ments thereto, upon which the said assessment is based, and which is referred to in the said writ, is not in so far as it imposes or imports to impose a tax upon that part of the gross monetary receipts of the Prosecutor, which is derived from telephone messages transmitted from the State of New Jersey to other states of the United States and foreign countries, and/or messages received in the

State of New Jersey from other states of the United States and foreign countries, an invalid regulation of and/or burden upon interstate commerce in violation of Article I, Section 8, Paragraph 3, of the Constitution of the United States.

4. Because in rendering the said judgment the Supreme Court denied that the said assesment, which imposes a tax based upon the gross monetary receipts of the Prosecutor derived from the transmission of telephone messages from the State of New Jersey to other states of the United States and foreign countries and/or messages received in the State of New Jersey from other states of the United States and foreign countries, as well as upon receipts derived from telephone messages transmitted and received wholly within the State of New Jersey, does not constitute an invalid regulation of and/or burden upon interstate commerce in violation of Article 1, Section 8, Paragraph 3, of the Constitution of the United States, in so far as the said assessment is based upon monetary receipts derived from telephone messages transmitted from the State of New Jersey to other states of the United States and foreign countries, and/or messages received in the State of New Jersey from other states of the United States and foreign countries.

[fol. 46] 5. Because the Supreme Court held that the said assessment was a property tax rather than a license tax.

6. Because the Supreme Court held that in making the said assessment under the said Statute, gross earnings of the Prosecutor were taken merely as a measure of the value of the franchise of the Prosecutor to use the public streets, highways, roads, lanes and other public places in the State of New Jersey.

Frankland Briggs and Wall, Haight, Carey & Hartpence, Attorneys for Prosecutor.

Service of copy of Notice of Appeal is acknowledged this seventh day of January, 1929.

Edward L. Katzenbach.

[fol. 46½] IN COURT OF ERRORS AND APPEALS OF NEW JERSEY

Doc. No., 8264

[Title omitted]

No. 106 of Feb. Term, 1929.
Date: May 20, 1929.
The Chancellor presiding.
Opinion per Curiam.

| Check list | Affirm | Reverse | Modify |
|---|---|---|---|
| The Chancellor | 1 | .. | .. |
| " Chief Justice | 1 | .. | .. |
| Mr. Justice Trenchard | .. | .. | .. |
| " Parker | 1 | .. | .. |
| " Kalisch | 1 | .. | .. |
| " Black | .. | .. | .. |
| " Campbell | .. | .. | .. |
| " Lloyd | 1 | .. | .. |
| " Case | 1 | .. | .. |
| Judge Van Buskirk | .. | .. | .. |
| " McGlennon | 1 | .. | .. |
| " Kays | 1 | .. | .. |
| " Hetfield | 1 | .. | .. |
| " Dear | 1 | .. | .. |

[File endorsement omitted.]

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[fol. 47] IN COURT OF ERRORS AND APPEALS OF NEW JERSEY, FEBRUARY TERM, 1929

No. 106

NEW JERSEY BELL TELEPHONE COMPANY, Appellant,

vs.

STATE BOARD OF TAXES AND ASSESSMENT, Respondent

Appeal from Supreme Court

OPINION—Filed May 20, 1929

Per CURIAM:

The judgment under review herein should be affirmed for the reasons expressed in the opinion delivered by Mr. Justice Black in the Supreme Court.

[File endorsement omitted.]

[fol. 48] In Court of Errors and Appeals of New Jersey

Between

New Jersey Bell Telephone Company, Appellant.

vs.

The State Board of Taxes and Assessment, Respondent

Judgment—Filed May 22, 1929

This cause having been duly argued at the February Term, 1929 of this court by Frankland Briggs, Attorney for Appellant, and Thomas G. Haight and Leonard A. Sweney, of Counsel for the Appellant and William A. Stevens, Attorney General, of Counsel for the Respondent, and the court having considered the same, and finding no error in the record or proceedings in the Supreme Court:

It is thereupon, on this twenty-second day of May in the year of our Lord one thousand nine hundred and twenty-nine, ordered and adjudged that the judgment of the Supreme Court, removed by the appeal in this cause, be affirmed with costs; and that the record be remitted to the Supreme Court to be proceeded with in accordance with this judgment and the practice of said court

On motion of

William A. Stevens, Attorney General, Attorney for Respondent.

[File endorsement omitted.]

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[fol. 49] In Court of Errors and Appeals of New Jersey

[Title omitted]

**Petition for Appeal, Assignment of Errors, and Prayer for Reversal**—Filed June 25, 1929

Petition for Appeal

Considering itself aggrieved by the final judgment of the Court of Errors and Appeals of the State of New Jersey

in the above entitled cause, the appellant therein, New Jersey Bell Telephone Company, hereby prays that an appeal be allowed to the Supreme Court of the United States, herein, and for an order fixing the amount of the bond thereon.

ASSIGNMENT OF ERRORS

And the said New Jersey Bell Telephone Company assigns the following errors in the judgment of the said Court of Errors and Appeals:

1. The said Court erred in that in rendering the said judgment it decided, contrary to Appellant's contention, and the Act of the Legislature of the State of New Jersey, with the amendments thereof and supplements thereto, pursuant to which the tax herein complained of was imposed, [fol. 50] as construed and applied herein, is not an invalid regulation of or burden upon interstate commerce, in violation of Article I, Section 8, Paragraph 3 of the Constitution of the United States, in so far as it imposes a tax upon that part of the gross receipts of the appellant derived from telephone messages transmitted from the State of New Jersey to other states of the United States and foreign countries, or messages received in the State of New Jersey from other states of the United States and foreign countries: said act being entitled (as said title was amended), "An Act for the taxation of all the property and franchises of persons, copartnerships, associations or corporations using or occupying public streets, highways, roads or other public places, except municipal and corporations taxable under the act entitled 'An Act for the taxation of railroad and canal property,' approved April tenth, one thousand eight hundred and eighty-four, or any of the supplements or amendments thereto, and except corporations taxable under the act entitled 'An act for the taxation of the property and franchises of street railroad corporations using or occupying public streets, highways, roads, lanes or other public places in this State,' approved May twenty-third, one thousand nine hundred and six," approved March 23, 1900, and amended by acts approved March 13, 1917, March 4, 1918 and March 30, 1927 and supplemented by the Act approved March 27, 1928.

2. The said Court erred in that in rendering the said judgment it decided, contrary to Appellant's contention, that the said tax imposed pursuant to said Act, and the amendments thereof and supplements thereto, as construed and applied herein, in so far as said tax was imposed upon the gross receipts of the appellant derived from the transmission of interstate and foreign telephone messages, as [fol. 51] aforesaid, does not constitute an invalid regulation of or burden upon interstate and foreign commerce, in violation of Article I, Section 8, Paragraph 3 of the Constitution of the United States.

3. The said Court erred in that in rendering the said judgment it decided, contrary to Appellant's contention, that the said Act of the Legislature of the State of New Jersey, and the amendments thereof and supplements thereto, as construed and applied herein, in so far as they authorized the imposition of a tax based upon or measured by the gross monetary receipts of the appellant derived from the transmission of interstate and foreign telephone messages, as aforesaid, does not deprive appellant of its property without due process of law, and does not deny to appellant the equal protection of the laws in violation of Section 1, Paragraph 2 of the Fourteenth Amendment to the Constitution of the United States.

PRAYER FOR REVERSAL

For which errors the appellant, New Jersey Bell Telephone Company, prays that the said judgment of the Court of Errors and Appeals of the State of New Jersey dated the twenty-second day of May, 1929, in the above entitled cause be reversed and a judgment rendered in favor of said appellant and for costs.

(Signed) Frankland Briggs, Attorney for Appellant.
Thomas G. Haight, of Counsel.

[File endorsement omitted.]

[fol. 52] In Court of Errors and Appeals of New Jersey

[Title omitted]

Order Allowing Appeal—Filed June 25, 1929

The appellant in the above entitled matter, having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above entitled suit by the Court of Errors and Appeals of the State of New Jersey on the twenty-second day of May, 1929, and from each and every part thereof, and having presented and filed its Petition for Appeal, Assignment of Erorrs, and Prayer for Reversal, pursuant to the statutes and rules of the Supreme Court in such case made and provided;

It is now here ordered that an appeal be and the same is hereby allowed to the Supreme Court of the United States from the Court of Errors and Appeals of the State of New Jersey in the above entitled cause as provided by law, and it is further ordered that the Clerk of the said Court of Errors and Appeals of the State of New Jersey or the Clerk of the Supreme Court of the State of New Jersey shall prepare and certify a transcript of the record, proceedings and judgment in this cause and transmit the same to the Supreme Court of the United States, so that he shall have the same in said Court within thirty days [fol. 53] of this date.

And it is further ordered that upon the filing by the appellant with the Clerk of this Court of a bond in the sum of $250,000.00, with good and sufficient security to be approved as to form and sufficiency of security by the undersigned, conditioned that the appellant shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his plea good, all proceedings to collect the tax or any part thereof, the validity of which was affirmed by the said judgment of the Court of Errors and Appeals of the State of New Jersey, be and they are hereby stayed pending this appeal.

Dated June 25th, 1929.

(Signed) E. R. Walker, Chancellor of the State of New Jersey and Presiding Judge of the Court of Errors and Appeals of New Jersey.

[File endorsement omitted.]

[fols. 54-55½] Citation, in usual form, showing service on M. A. Stevens, filed June 29, 1929, omitted in printing.

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[fols. 56-63½] Bond on appeal for $250,000, approved and filed July 5, 1929, omitted in printing.

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[fol. 64] Clerk's certificate to foregoing transcript omitted in printing.

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[fols. 65 & 66] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed July 20, 1929

Comes now the appellant and adopts its Assignment of Errors, record pages 49, 50 and 51, as its Statement of the Points to be Relied Upon, and represents that the whole of the record, as filed, is necessary for the consideration of the case and is to be printed, excepting, however, the Stipulation between the parties to this cause, dated July 15th, 1929, record pages 59 to 63, inclusive, which need not be printed.

Franklin Briggs, Counsel for Appellant.

[fol. 67] [File endorsement omitted.]

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Endorsed on cover: File No. 34,385. New Jersey Court of Errors and Appeals. Term No. 254. New Jersey Bell Telephone Company, appellant, vs. The State Board of Taxes and Assessment of the State of New Jersey. Filed July 20, 1929. File No. 34,385.